



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 20, 2004

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Environmental Justice News for May 1 - May 14, 2004

**FROM:** Nicholas Targ, Counsel  
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This summarizes environmental justice news for May 1, 2004, through May 14, 2004. Except as noted, this review is confined to Lexis/Nexis queries conducted under the following search: “(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/50 minorit! or low\*\*\*income) or (executive order 12898) or (civil right! w/50 environmental)”. Please note that we have not included multiple articles covering the same topic.

For the period ending May 14, 2004, the following news is current:

**A. News–**

**1. Noel C. Paul, “Boston debates dangers of scientific research in era of WMD,” Christian Science Monitor, Boston, Massachusetts (May 11, 2004).**

The article reports that residents of high-density, minority and low-income areas of Boston’s South End and Roxbury have raised concerns about the planned construction of a medical laboratory in their vicinity. City officials and Boston University are in support of the lab, which according to the article will, “be used to study some of the most dangerous viruses in the world such as Anthrax, Ebola, and other plagues.”

**2. Virginia Hennessey, “Private desalination plants worry environmentalists; Officials favor public agencies,” Monterey County Herald, Monterey, California (May 8, 2004).**

Participants at a recent environmental justice conference considered the cumulative effects of discharges from a proposed desalination facility on local disadvantaged and minority communities, according to the article. Marc Del Piero, a former County Supervisor and State Water Resources Control Board member said, “once multinational companies are permitted the right to build desalination plants along the coast, then the state will lose the right to regulate them.” Susan Jordan of the Coastal Protection Network, who is also a Santa Barbara County Planning Commissioner said, “water created through desalination should be used to create affordable housing and to address the disproportionate effects of water problems on disadvantaged communities.”

**3. Carolyn Carlson, “Group Studies health Issues,” Albuquerque Journal, Albuquerque, New Mexico (May 7, 2004).**

The article reports that, “the South Valley Partners for Environmental Justice has received a minority grant for \$69,809 from the national Institute of Environmental Health Science.” The grant funds a study to evaluate and address environmental health threats in the City of Albuquerque’s predominantly low-income and Hispanic population.

**4. “Second public speaker series set for city plan; Century Center speeches free and open to public,” South Bend Tribune, South Bend, Indiana (May 7, 2004).**

On June 1<sup>st</sup>, Majora Carter will give a presentation entitled, “Community Building that is Formed by the Needs of the Community and Values of Environmental Justice.” This presentation is part of the City of South Bend’s overall long range development plan, according to the article.

**5. Vivi Abrams, “Panel: Ecology, Civil Rights Are Linked,” Birmingham News, Birmingham, Alabama (May 1, 2004).**

A panel discussion at the Birmingham Civil Rights Institute featured the Reverend Fred Shuttlesworth and the Reverend Matthew Fox. The discussion focused on the intersection between faith, civil rights and environmental justice. “There is racism and classism involved in ecological destruction. Hazardous waste sites and industrial facilities with toxic chemicals and pollution tend to be located near poor minority communities in Alabama and elsewhere,” Fox is reported as saying.

**B. Legislative/Regulatory/Programmatic–**

**1. Department of Housing and Urban Development, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD’s Discretionary Programs, 69 Fed. Reg. 26942 (May 14, 2004).**

Among the programs and application requirements outlined in this notice, The Healthy Homes Initiative establishes a \$5,000,000 fund “to develop, demonstrate, and promote cost-effective, preventive measures to correct multiple safety and health hazards in the home environment that produce serious diseases and injuries in children of low-income families.” Not-for-profit institutions, and for-profit firms located in the U.S., state and local governments, and federally recognized Indian Tribes are eligible to apply. Among other goals, the initiative

seeks to “Affirmatively further fair housing and environmental justice.”

**2. Department of Transportation, Notice, “Six County Association of Governments--Construction and Operation Exemption--Rail Line between Levan and Salina,” UT. 69 FR 26923 (May 14, 2004).**

Upon the petitioners’ request to develop 43 miles of track, which would serve coal transportation needs and replace the use of trucks, the Surface Transportation Board announced the commencement of an Environmental Impact Statement. Among other things, the EIS will address issues of environmental justice. Specifically, the notice provides that, “The EIS will: a. Describe demographics in the project area and the immediate vicinity of the proposed new construction, including communities potentially impacted by the construction and operation of the proposed new rail line. b. Evaluate whether proposed new rail line construction or operation would have a disproportionately high and adverse impact on minority or low-income groups. c. Propose mitigative measures to minimize or eliminate potential project impacts on environmental justice communities, as appropriate. d. Discuss any potential indirect and cumulative impacts of the proposed new rail line on coal mining in Utah.”

**C. Litigation–**

***Senville v. Federal Highway Administration*, Case No. 2:03-cv-279, 204 U.S. Dist. LEXIS 8312 (D VT May 10, 2004).**

Reviewing an Environmental Impact Statement for a portion of a long-planned “circumferential highway,” which is designed to reduce congestion on surface streets, the court considered issues of sprawl and environmental justice within the context of NEPA and §4(f) of the Department of Transportation Act of 1966. Among other things, the court found that the NEPA documentation inadequately considered induced growth, “[o]ften referred to as ‘sprawl,’” encroachment of recreational lands, and alternatives. The court noted that “Induced growth consists not only of growth that would not have occurred absent the project, but of relocated or redirected growth due to changes in accessibility. . . . In its induced growth analysis, FHWA did not consider factors such as the detrimental social and economic impact of draining jobs and population from the region’s cities...” With respect to issues of environmental justice, relying on the Federal Circuit Court’s holding in *Communities Against Runway Expansion, Inc. v. Federal Aviation Administration*, the court found that it had jurisdiction to consider the EIS’ analysis. The court found that the “[d]efendants chose to include an environmental justice analysis in their evaluation of whether an SEIS was required. That analysis is therefore subject to review under the arbitrary and capricious standard of the APA.” The court found that the issues of environmental justice had been adequately considered.